BRITISH COLUMBIA

CONFLICT OF INTEREST COMMISSIONER

The Honourable H.A.D. OLIVER, Q.C.

ANNUAL REPORT

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BRITISH COLUMBIA

The Honourable Bill Barisoff, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia
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Mr. Speaker:

I have the honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2004/2005.

This report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Yours sincerely,

H A. D. Oliver
Commissioner

Office of the Conflict of Interest Commissioner

The Honourable H. A. D. Oliver, Q.C.
Commissioner

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About the Office of the Conflict of Interest Commissioner

The Office of the Conflict of Interest Commissioner exists as a result of and operates under the *Members' Conflict of Interest Act* RS Chapter 287 of the Revised Statutes of British Columbia, 2004. The Conflict of Interest Commissioner is an independent Officer of the Legislative Assembly. The present Commissioner was initially appointed in 1997 by a unanimous motion of the Legislative Assembly, moved by the then Premier and seconded by the then Leader of the Opposition following a report and recommendation from an all party committee of the Legislative Assembly. This appointment was for a five year term and was renewed in 2002 for a further five year term.

The Conflict of Interest Commissioner reports to the Legislative Assembly through the Speaker by means of annual reports, investigative reports or special reports on matters relating to his jurisdiction under the *Members' Conflict of Interest Act*.

The Commissioner is responsible for assisting Members of the Legislative Assembly and Members of Cabinet in reconciling their private interests and public duties so as to act with integrity and impartiality in such a manner as to bear utmost scrutiny at all times.

The Commissioner receives confidential financial disclosure statements from each Member within 60 days of election and after that annually, relating to the financial interests of the Member, the Member's spouse and minor children and private corporations controlled by any of them. Each filing is followed by a meeting of the Member with the Commissioner to discuss the Member's statement and Member's obligations under the *Members' Conflict of Interest Act* and the Commissioner may

recommend the manner by which the Member will comply with those obligations.

After filing a disclosure statement, the Member must continue to disclose any material change in financial circumstances by filing a statement of material change. Following the meeting between the Member and the Commissioner, the Commissioner prepares a public disclosure statement which is filed with the Clerk of the Legislative Assembly and is available for public inspection.

The Commissioner may provide formal opinions to Members about their individual obligations and conduct under the *Act* or to Members about the conduct of other Members of the Legislative Assembly or to members of the public about the conduct of Members under the *Act*. The Commissioner may also provide opinions to Cabinet or to the Legislature as a whole.

The Commissioner may pursue investigations and formal inquiries into the conduct of individual Members and may report to the Legislative Assembly, through the Speaker, the results of such inquiries into alleged breaches of the *Act*. The Commissioner may recommend penalties arising out of any findings of misconduct under the Act varying from a reprimand to a fine to suspension to expulsion from the Legislative Assembly. The Assembly may accept or reject the Commissioner's report and recommendations but may not vary the penalty. The *Members' Conflict of Interest Act* prohibits Members from performing official acts whilst in a conflict of interest or apparent conflict of interest situation or from the improper use of insider information or from the exercise of improper influence or from accepting fees, gifts or personal benefits except in specified circumstances. The *Act* imposes additional obligations on Members of Cabinet and Parliamentary Secretaries and restricts the private activities of former Ministers and Parliamentary Secretaries following their retirement from office.

By far the greatest portion of the Commissioner's time is taken up by informal, confidential meetings with Members of the Assembly and of Cabinet to discuss Members' problems or potential problems under the statute or to provide assistance to Members in identifying potential future problems not readily observable at first glance with a view to their avoidance.

It is in the exercise of this informal and confidential consultative function that the most valuable aspect of the Commissioner's work may be found.

It is the total independence granted to the Commissioner under the *Members' Conflict of Interest Act* and his ability to operate free from all outside direction, pressure or influence which has made possible the effective functioning of the Office of the Conflict of Interest Commissioner of British Columbia.

Commissioner's Comments

This is the 12th Annual Report of the Conflict of Interest Commissioner for the period commencing January 1, 2004. Departing from the usual practice, I intend to cover the period ending with the end of the 37th Parliament in May 2005 so that the next Annual Report will cover the period commencing with the beginning of the 38th Parliament.

The functions of the Conflict of Interest Commissioner can be largely divided into two

categories: 1) Consultation; and 2) Enforcement. To use an expression coined by Commissioner Clark – a long time Ethics Commissioner for Alberta now retired – the Commissioner should be 90% priest and 10% policeman.

I have, throughout my time in office tried to encourage all Members to make the widest possible use of the consultative or advisory services of my office and have made myself available to every Member of the House for confidential advice 24 hours a day on all 365 days of the year. The effectiveness of that informal confidential advisory process depends very largely on the measure of trust which can be developed between the Commissioner and each Member and I have been extremely pleased to find that with the enthusiastic support of both the Premier and the Opposition Leader, Members have readily availed themselves of the opportunity of seeking advice or guidance or of merely seeking a different perspective of some proposed course of action or potential problem rearing its threatening head on the horizon. I am appreciative to all Members of the 37th Parliament who have shown confidence in this Office, which in turn has made it easier for me to assist them in safely navigating the ship of state through potentially dangerous shoal waters and around hidden rocks.

The greater the success in avoiding conflict of interest and other unethical and unacceptable conduct through the confidential consultation process, the less the need to exercise the enforcement aspect of the Commissioner's duties. There are, of course, members of the public who still appear to believe that the Commissioner controls some powerful mini-police force. In fact, the Commissioner is, to a large degree, dependant in his enforcement role on reports from other Members of the House and members of the public. Members of the public have never been backward in coming forward in this respect but are frequently unaware of the extent and limitations of the Commissioner's powers and tend to bring forward complaints based to a large degree on policy decisions made by individual Members. The Conflict of Interest Commissioner is neither a politician nor a legislative nanny and members of the public unhappy with the policy

decisions of some individual Member must find their remedy at the ballot box. My office is likely to continue receiving some complaints from those who misunderstand the limitations based on the Commissioner's powers by statute. These are what we describe as "non-jurisdictional complaints": we nevertheless try in every case to assist inquirers to the best of our ability either by advice or by assisting them in finding a more appropriate direction in which to pursue their inquiries so that none should feel that this is one more public office where they are given the brush off.

I have viewed with the greatest of respect the valiant conduct of the Opposition - so necessary to the proper functioning of any parliamentary body under the Westminster system - by two dedicated and overworked Members (latterly, three) and I can understand that the heavy burden they carried of upholding the essential function of a parliamentary opposition reduced the number of complaints normally to be expected in well balanced parliament. I do not mean that I wish to encourage the creation of ill-founded complaints of alleged unethical conduct sometimes brought by Members of a parliamentary body against Members on the other side of the floor for purely aggressive, embarrassing, offensive or tactical purposes as may be found in some legislative bodies but I am sure I will be forgiven for reminding Members on both sides of the new House that "eternal vigilance is the price of liberty".

At the same time I wish to dampen any excessive enthusiasm which these words may have created by reminding all Members of section 21(5) of the *Members' Conflict of Interest Act*;

> "If the Commissioner is of the opinion that the Member making the application under section 19(1) had no reasonable and probable grounds for making it, the Commissioner may state that in his or her report, and if he or she does so, the Commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after

considering the matter, hold the Member in contempt of the Legislative Assembly."

I am confident that I may safely rely on Members on both sides of the new House to bring to the attention of my Office any conduct of Members of the House in breach of the provisions of the *Members' Conflict of Interest Act*. I am equally confident that Members, in deciding what allegations to bring to my attention will conduct themselves with their customary restraint so that the limited resources of my Office may be fruitfully employed in dealing with genuine complaints and genuine complaints only.

Perhaps I should add that it is my constant endeavor to administer the *Members' Conflict of Interest Act* according to its' spirit and to what I conceive to be the intention of the Legislature in enacting it and that I do not wish to encourage either over-technical complaints or over-technical defences.

Election 2005

Incoming Members

With the May election, the office has taken on a proactive role in preparing for change. New Members are required to submit their private disclosure statements within 60 days of election. They are then required to meet with the Commissioner and discuss various aspects of their financial disclosure statements.

My advice and services are available to those candidates who might feel bewildered regarding the requirements of section 16 of the *Act* and they can call this office at any time to review the *Act* with the Commissioner and consult with him should they have any concerns.

With a goal to making the transition into political life run smoothly, I contacted the two House leaders and offered, through them, my advice and services to any potential candidates who might have questions or concerns.

Returning Members

Returning Members are required to submit their Private Disclosure Statement Forms within 60 days. Many returning Members may feel that this is an exercise in over-kill having so recently completed their disclosure statements for last year.

Once the election writ is dropped, all Members cease to be Members. Their Public and Private Disclosure Statements become obsolete. New disclosure statements must, by statute, be completed and submitted to this office.

Non-returning Members and Ministers

The *Members' Conflict of Interest Act* outlines the procedure for former Members of Executive Council and former parliamentary secretaries in section 8 of the Act. It is as follows:

Former Members of Executive Council and former parliamentary secretaries

8 (1) The Executive Council, a Member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly

(a) award or approve a contract with, or grant a benefit to, a former Member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former Member of the Executive Council or former parliamentary secretary ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former Member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former Member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former Member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former Member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former Member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a Member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A former Member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former Member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than $5 000.

I anticipate requests for guidance as to acceptable employment from former Executive Council Members and will of course endeavor to be of assistance.

2004/2005 Opinions

The following is a small compilation of issues, opinions and guidelines provided to Members of the Legislative Assembly of British Columbia over the past calendar year.

Constituency Offices

1) I was asked to advise on the use of Constituency Offices, communications equipment, constituency assistants and Members' legislative support staff during and in connection with political or election campaigns.

I limited my consideration of these problems to the requirements of the *Members' Conflict of Interest Act* and will deliberately refrain from dealing with aspects falling within the jurisdiction of the Chief Electoral Officer.

Background:

One of the basic principles of democratic elections is that there must be a level playing field for all candidates. One candidate should not have an advantage over other candidates because of access to public funds or because of the status associated with being a Member of the Legislative Assembly. In keeping with this principle, when the Legislature is dissolved, Members instantly cease to be Members.

Attention is drawn to the Member's Procedure Manual, section 1.0 The Calling of an Election and in particular section 2.14: Constituency Offices. The guidelines for the use of Constituency Offices are formally set out in this manual published by the Legislative Comptrollers Office. A Member's constituency office may not be used for partisan political activities. The constituency office is designed to encourage communication between the Member and all of his or her constituents and must be operated on a strictly non-partisan basis. Constituency offices may remain open during an election campaign subject to the above restriction on political activities. Offices may not display partisan political signs during an election campaign or be used as campaign offices or headquarters at any time.

Telephone and electronic communication equipment:

Constituency offices are equipped using public funds. Telephone, facsimile lines and e-mail accounts are left in place during the writ period, however, it is advisable to set up voice mail with a message indicating the number of the campaign office for those people calling about the election or party political issues. This automated response during the election period is wise. Any callers will be informed that if their queries or correspondence deal with campaign or political issues, they must call or write to the campaign office.

Use of e-mail during the writ period should be strictly limited to non-partisan constituency office business only. Any political correspondence should be dealt with at the campaign office.

Care should also be taken during the run-up period prior to an election to avoid any ***perception*** that the constituency office is being used for party political

purposes. Thus, Members and their constituency staff should respond to calls of a party political nature according to simple, prearranged guidelines as, for example:

"Thank you for your call (or correspondence). We cannot deal with party political matters from the official constituency office. Please direct any inquiries regarding political activities, political events or other campaign issues to Jane Doe at (telephone #)."

It must be remembered that equipment and services in the constituency office are provided at public expense and that they should not be used for party political purposes. A Member has of course no control over incoming communication but the response should generally be along the lines outlined above. If a communication is received during the pre-election period inquiring, for example, as to a Member's availability to attend an election related function, the inquirer should be dealt with as outlined above: a simple response to the caller that the Member would or would not be available on a certain date would not be objectionable but any further discussion would be undesirable. Members should bear in mind that it would not be unheard of for an ill-wisher to attempt to trap the Member into some form of political discussion whether by use of a constituency office telephone line or by e-mail with a view to a subsequent hostile attack.

Constituency Assistants:

It is recommended in the Members Procedures Manual that Members provide written notice to their employees the day the election writ is issued, that notice being automatically rescinded for all returning Members. The constituency office remains open during the election period and constituency office staff will remain on the public payroll. Constituency assistants who choose to work on the

campaign must take an unpaid leave of absence during this period and work outside of the environs of the constituency office.

The same rule as to campaign work applies to Members' legislative support staff. Great care should be taken to ensure that constituency assistants and other political staff remaining on the public payroll should strictly avoid becoming involved, in an excess of enthusiasm, in any campaign activities.

The mere receipt by a Member or their political staff of an election-related message for a Member will not, if nothing is done by the staff member beyond placing the message in the Member's in-tray, be regarded as an infraction.

Double Income

2) A Member discussed with me the possible ethical issues arising out of the fact that although he continues to serve as a Member of the Legislative Assembly of British Columbia - an elected office he has now held for some years - the B.C. Pension Corporation will start to pay the pension to which he is entitled under Parts 5 and 11 of the Public Service Pension Plan rules as of January.

Since the Member will be receiving both remuneration and pension in respect of the same employment, the Member was concerned about the possibility that they might be accused of what is sometimes referred to as "double dipping". I have addressed this problem on previous occasions and have had the benefit of reading

letters of opinion from leading tax lawyers and from chartered accountants and have consulted one of the most senior and distinguished Members of the Bar. It seems clear that the pension benefits are required by the rules of the *Income Tax Act* Canada and its regulations to commence to be paid not later than the end of the calendar year in which the Member would reach their 69th birthday. I am advised that these involuntary pension benefits must commence on that date and that no deferral is possible under the existing Public Service Pension Plan rules.

The legal and accounting aspects of this matter have been ably addressed by experts qualified to do so. I restrict my comment to the ethical aspect. The Member has, in my view, explored all possible avenues to counter any suggestion that he has been unjustly enriched by receiving pension benefits whilst still in active service.

It is my opinion that any suggestion of unjust enrichment by "double dipping" or of any other ethical shortcomings would be entirely unjustified in the circumstances. Regard must also be had to the fact that the Member's inability to defer payment of his pension benefits will expose him to payment of income tax at a higher marginal rate.

Mobile Sandwich Board

3) This Member's riding association wishes to lease, for the Member's use, an automobile displaying posters with the Member's name: the Member will be a candidate in the forthcoming (May 2005) election. The Member has told the

riding association that he wishes to check with the Conflict of Interest Commissioner before any further steps are taken. The provision of a motor vehicle in these circumstances does not, in my view, constitute a "gift or benefit" to the Member since the car is not so much a means of transportation as a mobile billboard.

Accordingly, I find that the proposed course of action would not constitute a breach of the *Members' Conflict of Interest Act*.

I was, however, concerned about the *Elections Act* and contacted the Chief Electoral Officer. After discussion with the Director of Finance with the Office of the Chief Electoral Officer, I have concluded that the provision of the vehicle to a Member intending to be a candidate in a forthcoming election would constitute a political contribution under section 180 of the *Elections Act* and the provision of such a vehicle by the Riding Association would be likely to contravene section 186 (3) of the *Elections Act*. Accordingly, whilst the Member's proposed course of action would not be objectionable from a conflict of interest point of view, the Member should be warned not to proceed further with this scheme without prior approval of Elections BC.

Constituency Office Staff

4) A Member reported to me that in the month of May 2003, his riding association held a fundraising event. The fundraising Chair on the Executive Board of his riding association is responsible for managing such events and had sent out the

usual notices and invitations to Members and others. In the days leading up to the event, the Member received a request from his executive to assist in follow-ups to potential attendees. The Member asked his constituency staff for help and calls were made from his constituency office by the staff in this regard. The Member has now learnt that this should not have happened and has asked for my opinion and recommendation pursuant to section 18 of the *Members' Conflict of Interest Act*.

Members' attention is drawn to the following prevailing principles:

a) The constituency allowance can be spent for secretarial services, office rental and overhead, stationary and supplies and any other purchase or services related to the operation of a constituency office.

b) The constituency office must not be operated out of the Member's personal property or out of political party offices or headquarters.

c) A Member's constituency office may not be used for partisan political activities.

d) The constituency office allowance is designed to encourage communication between the Member and all of his or her constituents and must be operated on a strictly non-partisan basis.

The elected Member represents all citizens in the riding. At election time a Member would have been supported by some citizens but not by others. That is how a properly functioning democracy works. Once elected, however, the Member is the one and only representative for all the citizens of the riding. Every attempt must be made to make everyone feel comfortable in entering and doing business in the constituency office without the presence of any semblance of political partisanship. It is appreciated that political parties must have financial resources available to them. The constituency allowance, however, should not be a source of such funding, directly or indirectly. Members must ensure that their constituency staff is made aware of these principles. I appreciate that this incident rose by inadvertence and am satisfied that the Member will be careful to ensure that the policy outlined in this letter is carefully observed in the future.

Travel Expenses

5) In view of frequent requests for advice on the acceptability of offers of payment of Members' travel expenses, the Commissioner wishes to indicate his own guidelines in considering such requests (although each request is considered on its individual merits).

a) Necessary travel expenses or transportation at no cost may be accepted by Members engaged on an authentic "fact-finding" tour where such tour is taken for educational purposes directly related to official duties. Such an event must not be for the personal pleasure or entertainment of Members but rather to allow them to become better informed regarding subject matters closely related to their official duties. Such a fact-finding event for educational purposes might include an oil company sponsoring an inspection tour of its offshore oil-drilling platform, or a lumber company arranging a demonstration of new logging methods in a remote area. Such an event must, as stated, be directly related to official duties as, for example, where a Member sits on a Committee of the House or a Caucus Committee whose functions bear a genuine relationship to the event being attended.

The term "fact-finding event" is intended to be interpreted narrowly so that travel expenses provided by representatives of the Maritime industry to attend a ship launching or participate in a free ocean cruise and such things as inaugural flights on new airline routes, would not be considered as genuine fact-finding activities and would fall under the prohibited gift provisions of the *Members' Conflict of Interest Act*.

b) Approval will more readily be given for travel provided by a government organization (federal, provincial or municipal) or a government sponsored body or by a recognized professional body (e.g. Law Society, Canadian Bar Association, BC College of Physicians and Surgeons, Canadian Medical Association, BC Medical Association) or by a recognized public interest or industrial or labour organization (e.g. BC Mining Association, Vancouver Board of Trade) but approval for free travel provided by a commercial for profit corporation or corporate group will only be approved in exceptional circumstances.

c) Where the purpose of travel is to perform official duties such as general oversight activities within a Committee's jurisdiction or representation of the government or of a ministry and where the Member's presence is considered to be of particular value to the government or a ministry, the government or that ministry should bear the expense of travel.

d) Free travel invitations as a guest on private corporate aircraft will not normally be approved except in the circumstances referred to above. If travel aboard such aircraft takes place at all, it should be paid for either by government in the case of travel to fulfill official duties or by the Member where the purpose is substantially pleasure. In all other circumstances, the Commissioner's approval should be sought prior to acceptance.

e) In any case where payment by a Member to the owner of privately owned or corporate aircraft is thought appropriate after consultation with the Commissioner but is found to be prohibited by law, consideration should be given to the making of a donation to an approved charity of an amount equivalent to the fair cost of travel. In such a case, any amount so paid must not be claimed as a charitable deduction for income tax purposes.

f) When free travel is offered by relatives or close personal friends of long standing (with no financial interests which might directly or indirectly be advanced by such offer), Members should seek the Commissioner's guidance in determining whether to accept or reject the offer. Where acceptance might give the appearance of benefiting the Member's financial interests – directly or indirectly, approval will be refused.

g) In all cases, where the wisdom of accepting an offer of travel is in the slightest doubt, Members are urged to seek assistance of the Commissioner.

Ethics Bulletins

The Office of the Conflict of Interest Commissioner is in the process of compiling a selection of "Ethics Bulletins" for Members of the Legislative Assembly. They will deal with a variety of topical issues arising under or in connection with the *Members' Conflict of Interest Act.*

Budget

The annual operating budget for the Office of the Conflict of Interest Commissioner is $292,000.00. We continue to work within the constraints of this amount and hope to continue to do so for 2006.

Office Administration

Last, but by no means least, I wish to recognize the contributions to the work of this office of my administrative staff. Ms. Jill Robinson and Ms. Daphne Thompson job-share the position of Administrative Assistant. It is either Jill or Daphne who will answer the phone or act as the "front-line" for the office. Their collective knowledge of this office is remarkable. Ms. Betsi Curdie is our Senior Research Officer and is responsible for researching everything from aquaculture to milk quotas. She is also responsible for our budget and keeps us within its' limited perimeters. All three are extremely proficient and committed to the work of the Conflict of Interest Commissioner and to this office. Having worked with successive Commissioners over the past 13 years, they have developed a collaborative and indispensable relationship with each other, with me and most importantly with Members of the Legislative Assembly. These relationships are of considerable importance to the work of the Conflict of Interest Commissioner and in fact, to all Members of the Legislative Assembly of British Columbia.

We are told that the British Columbia Conflict of Interest Office is one of the most effective of such organizations: my staff and I look forward to assisting the Members of the 38th Parliament in maintaining and enhancing that tradition.

Queen's Printer for British Columbia
Victoria 2005

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